



U.S. Citizenship
and Immigration
Services

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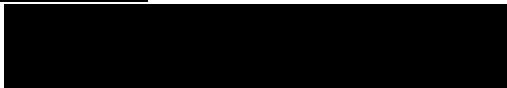


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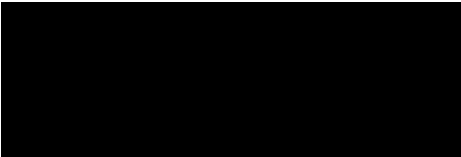
IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401.

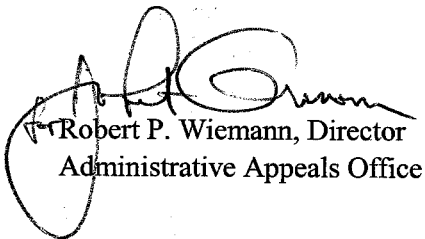
ON BEHALF OF PETITIONER:



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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on March 15, 1959, in San Francisco del Oro, Chihuahua, Mexico. The record indicates that the applicant's mother [REDACTED] was born in San Fernando, California, on March 19, 1926, and that she was a United States citizen. The applicant's father, [REDACTED] was born in Mexico, and never had a claim to U.S. citizenship. The applicant's parents were married on January 7, 1943, in Chihuahua, Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found the applicant had failed to establish that his mother was physically present in the United States for 10 years, at least 5 of which were after the age of 14 and prior to the applicant's birth. The district director's denial noted that the applicant failed to provide any official records or documents to support his assertion and based his claim solely on affidavits provided by friends and family members. The application was denied accordingly.

On appeal, counsel asserts that the declarations submitted by friends and family members prove that the applicant's mother resided in the United States for at least 10 years including 5 years after she turned 14 year old. He states that the applicant was unable to locate any documents showing that his mother resided in the U.S. for the required period as the events took place over 40 years ago.

Counsel acknowledges that once birth in a foreign country is established, there is a presumption of alienage and the applicant bears the burden of proof in establishing a claim to U.S. citizenship. *Vlisidis v. Holland*, 245 F.2d 812 (3rd Cir. 1957). However, citing *Travis C. Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995), counsel maintains that the burden of persuasion remains on the Service to establish the alienage of the applicant by clear and convincing evidence, a heavier burden than a preponderance of the evidence. The AAO does not find this argument persuasive. *Travis C. Murphy v. INS* concerns an individual who claimed to have been born in the U.S. Virgin Islands and was therefore a U.S. citizen at birth. The court found that the Service had not presented sufficient evidence to rebut this claim to citizenship. In the present case, the applicant is not claiming to have been born in the United States, but acknowledges that he was born in a foreign country and, as such, has the burden of proving his claim to citizenship.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1959. Thus, the version of section 301 of the Act that was in effect at that time (section 301(a)(7)) controls his claim to derivative citizenship.

Section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), provides, in pertinent part, that:

- (a) The following shall be nationals and citizens of the United States at birth:

...

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years

In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that his mother was physically present in the U.S. for ten years between March 19, 1926, and March 15, 1959, and that five of those years were after March 19, 1940, when his mother turned 14 years of age.

The record contains a late registered birth certificate indicating that the applicant's mother (Mrs. [REDACTED]) was born in San Fernando, California on March 19, 1926. Affidavits from friends and family members indicate that she remained in San Fernando into her teens, until her family moved to Mexico. The affidavits are all very vague and give few, if any, details. Letters from individuals who claim to have been close friends state only that they knew her through her teens, with no specific details. Affidavits from family members put her age at 16, 18 and/or 19 years of age when she moved to Mexico, but all agree it was prior to her marriage. A marriage certificate contained in the record shows that she was married on January 7, 1943, just short of her 17th birthday. Without further corroboration it is impossible to determine how long she resided in the United States prior to moving to Mexico.

The period of time between moving to Mexico as a teen and the birth of her son in 1959 is equally vague. A letter from a former employer states that Mrs. [REDACTED] worked for her once or twice a week from 1951 to 1954. The letter does not, however, state where the employer was living at the time, nor if Mrs. [REDACTED] worked for her every week throughout the year. An affidavit and sworn testimony from the applicant's older sister states that she remembers her mother going to El Paso to clean houses and hotels. She testified that they were living in Juarez, Mexico at the time and she believes that when she was about 8 or 9 years old (1953 or 1954) her mother would go to El Paso for two or three months and then return to Juarez for about 4 weeks. Again, without corroborating evidence it is impossible to determine exactly when Mrs. [REDACTED] resided in the United States.

Also contained in the record is a photocopy of an N-600 application submitted by the applicant's half-brother, [REDACTED]. He also claimed citizenship through his mother, Mrs. [REDACTED]. On his application, completed in 1983 when Mrs. [REDACTED] was still living, he indicated that his mother lived in the United States from 1926 to 1931 and then again from 1972 to present. A handwritten note on the form, presumably added by the adjudicator at the time of the applicant's interview, states that she "left U.S. when she was 5 yrs. old to Mexico w parents." This information contradicts all the information provided in the affidavits contained in the applicant's record. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I.&N. Dec. 582 (BIA 1988).

A review of all the materials contained in the record fails to establish that Mrs. [REDACTED] resided in the United States for the requisite period of time. The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. See also § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.